In The

Supreme Court of the United States

October Term, 1978

No. 78-1808

JOHN CONWAY, ET AL

Appellants,

v.

THE HOSPITAL CORPORATION OF AMERICA
AND THE CITY OF LONGVIEW, TEXAS

Appellees

Appeal from the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas

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Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, Appellants, John Conway, et al, file this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the judgment entered by the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas in this case and should exercise such jurisdiction herein.

OPINION BELOW

The opinion of the Court of Civil Appeals for the Sixth Supr me Judicial District of Texas is not yet reported and is included herein as Appendix A (pp 14-23).

GROUNDS OF JURISDICTION OF SUPREME COURT

This appeal arises from declaratory action to void amendatory ordinance 1211 of the City of Longview, Texas, and injunctive action to enjoin its enforcement. The judgment of the Court of Civil

Appeals for the Sixth Supreme Judicial District of Texas was entered on January 25, 1979. This appeal draws into question the validity of Ordinance 1211 on the ground that it is repugnant to the Constitution of the United States. The judgment of the Court of Civil Appeals upheld 1211.

On January 31, 1979, a motion for rehearing was filed in the Court of Civil Appeals, and it was overruled February 12, 1979. Said motion for rehearing, its date of filing, and order thereon by the Court of Civil Appeals are included herein as Appendix B (pp 24-31). An application for writ of error to the Texas Supreme Court was timely filed March 6, 1979, and it was overruled March 14, 1979. A motion for rehearing was filed in the Texas Supreme Court March 21, 1979, and it was overruled April 11, 1979. The said motion for rehearing and all previous said orders of the Texas Supreme Court are included herein as Appendix C (pp 32-40).

The jurisdiction of this Court is invoked under the provisions of Title 28 United States Code Section 1257(2). If that jurisdictional basis is found to be absent, Appellants pray for this Court to regard their jurisdictional statement as a petition for writ of certiorari under Title 28 United States Code Section 2103. Cases that sustain the jurisdiction of this court include Erznoznik v. City of Jacksonville, 422 U.S. 205,207,45 L.Ed.2d. 125, 95 S.Ct. 2268 (1975) and Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 476, 43 L.Ed.2d 328, 95 S.Ct. 1029 (1975). Ordinance 1211 is included herein as Appendix D (pp 41-44). Timely notices of appeal were filed April 19, and 25, 1979, in the Court of Civil Appeals and are included herein as Appendix E (pp 45-48).

QUESTIONS PRESENTED

1. Whether the court below improperly upheld Ordinance 1211 when it violated the Due Process Clause of the Fourteenth Amendment because, on the date of its enactment, Appellants were not given a fair and impartial public hearing when the hearing in question was

not held at a meaningful time or in a meaningful manner by the Longview City Commission.

2. Whether the Due Process Clause of the Fourteenth Amendment applies to public hearings required by law before municipal legislative zoning bodies.

3. Whether the forms of law required to be followed, to enact a valid ordinance, were ignored in violation of the Due Process Clause of the Fourteenth Amendment.

4. Whether ordinance 1211 violates the Due Process Clause of the Fourteenth Amendment on the grounds of vagueness.

5. Whether ordinance 1211 is clearly unreasonable and arbitrary, and violates the teachings of Euclid v. Ambler Realty Co., 272 U.S. 365, 71 L.Ed. 303, 47 S.Ct. 114 (1926).

6. Whether the police power cannot be used to enact unreasonable and arbitrary zoning ordinances in violation of the Due Process Clause of the Fourteenth Amendment.

7. Whether the Appellants were denied due process of law in violation of the Fourteenth Amendment when discovery was denied of Appellees' records to ascertain if the Hospital Corporation of America was recovering the payment of bribes by it from charges to its patients.

8. Whether the police power authorizes the passage of a zoning ordinance that may be used for a purpose clearly contrary to the police power.

STATEMENT OF THE CASE

The record included a transcript (Tr.) and statement of facts (S.F.). On April 18, 1978, Appellee Hospital Corporation of America's application to rezone 10.3 acres of an undeveloped 186.24 acre tract from SF-4 (Single Family Residential) and Agricultural to Planned Development-Medical Center was denied by the Planning

and Zoning Commission of the City of Longview, Texas. The 10.3 acre tract is surrounded by lands either developed or zoned single family residential, except to the east where North Fourth Street is its eastern boundry. Appellee appealed to the Longview City Commission and on May 9, 1978, said commission held the required public hearing under state law. The hearing was closed, and action delayed, pending Appellee obtaining a certificate of need from the State of Texas. Appellee's request for a certificate of need was first denied but later approved. On July 6, 1978, the Longview City Commission, as shown by Appendix F (p 49), refused to hold another public hearing and passed amendatory ordinance 1178 rezoning the subject lands to Planned Development-Medical Center. Because the proposed hospital was adjacent to Appellant's single family neighborhood, and encroached upon lands long zoned single-family residential, Appellants opposed Appellee's application on April 18, 1978, and May 9, 1978. Appellants were not allowed to voice their objections July 6, 1978 and immediately thereafter filed suit in the 124th District Court of Gregg County, Texas, at Longview, Texas, to declare the ordinance 1178 void and to enjoin its enforcement. After a procedural notice defect was raised in the trial court, that ultimately voided ordinance 1178, Appellees, without a new application, obtained another "public hearing" before the Longview City Commission on September 15, 1978, and while court action involving ordinance 1178 was still pending. In the notice of the September 15, 1978, hearing sent to Appellants it was clearly stated that the Longview City Commission was holding said hearing only because a legal technicality threatened the validity of ordinance 1178. The notice further stated the purpose of the September 15, 1978, hearing was to affirm the prior zoning ordinance actions by the Longview City Commission. At the beginning of said hearing, the Mayor of Longview, Texas, made similar announcements (S.F. 19-20, 86-87, 177-180, Ex. 8 Letter dated August 29, 1978). Appellants objected to said hearing but on September 15, 1978, the Longview City Commission passed amendatory ordinance 1211 (identical to 1178) rezoning the subject lands to

Planned Development-Medical Center.

Texas zoning ordinances are municipal legislative acts. Municipalities can only pass ordinances that comply with each and every requirement of Articles 1011a - 1011j of the Revised Civil Statutes of Texas. Article 1011f expressly states that the Planning and Zoning Commission of a city shall make its recommendations on regulations before the city legislative body acts. Ordinance 1211 was never presented to the Planning and Zoning Commission for its recommendation before it was enacted by the Longview City Commission. Further the Comprehensive Zoning Ordinance of Longview provides:

> Before taking action on any proposed amendment, supplement or change, the governing body shall submit the same to the City Planning and Zoning Commission for its recommendation and report.

PROCEEDINGS IN STATE COURTS

Appellants went to trial with their second amended petition and trial amendment thereto (Tr. 4-18). A judgment was entered upholding 1211 (Tr. 33-34). Appellants filed motions for new trial which was overruled (Tr. 41-72, 74). After said rulings, Appellants requested the trial judge to state findings of fact and conclusions of law and he did (Tr. 36-40, 86-90). State appellate procedures have already been described herein.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

All federal questions were raised in the trial court by Appellants' pleadings and motions for new trial. Before Ordinance 1211 was introduced into evidence appropriate constitutional objections herein were levied against it. (S.F. 28-31,367-369). By argument appropriate constitutional objections to Ordinance 1211 were brought to the trial court's attention (S.F. 396-403,413-414,427-428). All federal questions were briefed before the Court of Civil Appeals, and briefed

in Appellants' application for writ of error to the Texas Supreme Court. All federal questions were urged in Appellants' motions for rehearing filed in both state appellate courts. By motion for rehearing, Euclid v. Ambler Realty Co., 272 U.S. 365, 71 L.Ed. 303, 47 S. Ct. 114 (1926) was specifically cited to the Texas Supreme Court. All federal questions herein were overruled by the state courts.

SUBSTANTIALITY OF FEDERAL QUESTIONS

Longview, Texas has a comprehensive zoning plan. It, and any zoning amendment thereto, must comply with each and every requirement of Texas Revised Civil Statutes Articles 1011a - 1011j Bolton v. Sparks, 362 S.W.2d 946 (Tex.Sup.Ct. 1962). Longview's zoning plan provides a procedure for its amendment, and said procedure is governed by Articles 1011d - 1011f. Texas Revised Civil Statutes Article 1011d partly states *no* (zoning) regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. When Ordinance 1211 was enacted on September 15, 1978, Appellants were denied both procedural and substantive due process in violation of the Fourteenth Amendment.

The mayor of Longview testified that after the notice deficiency of Ordinance 1178 was raised in court, another hearing was held by the Longview City Commission *only* to correct the deficiency (S.F. 177-178). Notice of the September 15, 1978, hearing stated:

> "In an effort to exercise abundant precaution the City Commission has chosen to reschedule a public hearing on those zoning change requests approved May 9, 1978."

On September 15, 1978, at the beginning of said "public hearing" the Mayor read this statement (S.F. 179):

> "These public hearings are being held in order that the City Commission's previous action not be nullified because of a technicality."

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; . . . It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner Fuentes v. Shevin, 407 U.S. 67, 80, 32 L.Ed.2d 556, 92 S.Ct. 1983 (1972); Armstrong v. Manzo, 380 U.S. 545, 552, 14 L.Ed.2d 62, 85 S. Ct. 1187 (1965). *Armstrong v. Manzo* was cited to all state courts as In Re Armstrong 394 S.W.2d 552 (Tex.Civ.App.-El Paso 1965, no writ). Appellants' opposition to 1211 was condemned *before* the meeting of September 15, 1978, and at its beginning, before a testimony was taken. Court action on 1178 was still pending, and the Longview City Commission only held the September 15, 1978, meeting because the validity of 1178 was in doubt. The hearing was not held at a meaningful time and in a meaningful manner. It constituted arbitrary action. Ordinance 1211 stated a full and fair hearing was afforded to all property owners and to interested persons in the affected area. Appendix D (pp 41-44). The opposite was true.

Appellants would only have been granted due process by the trial court voiding 1178 and/or the zoning process started again beginning with the Planning and Zoning Commission. Only that would have wiped the slate clean. Only that would have restored Appellants to the position where due process could be accorded to them Armstrong v. Manzo, 380 U.S. 545, 552, 14 L.Ed.2d 62, 85 S.Ct. 1187 (1965). When Ordinance 1211 was enacted with such haste, the clear and mandatory terms of Texas Revised Civil Statutes Article 1011f and Article 21-101(A-C) of the Longview Comprehensive Zoning Ordinance were ignored Bolton v. Sparks, 362 S.W.2d (Tex.Sup.Ct. 1962). Said statutes dictated the Planning and Zoning Commission's hearing and recommendation prior to enactment of any ordinance by the Longview City Commission. When they were ignored, Appellants were denied substantive due process because the required forms of law to enact a valid ordinance were not followed.

As stated in City of Eastlake v. Forest City Enterprises, Inc. 426 U.S. 668, 681, 49 L.Ed.2d 132, 96 S.Ct. 2358 (1976), and Village of Belle Terre v. Boraas, 416 U.S. 1, 14, 39 L.Ed.2d 797, 94 S.Ct. 1536 (1974) the process of making ordinances, and the ordinances themselves, must meet constitutional standards and not infringe upon fundamental constitutional rights. In City of Eastlake v. Forest City Enterprises, Inc. *supra*, a justice of this Court says a zoning procedure that affords no realistic opportunity for affected persons to be heard is fundamentally unfair. In the same case, two other justices raised a federal question preserved by this case — Must the procedure which a city employs in deciding to grant or to deny a property owner's request for a change in the zoning of his property comply with the Due Process Clause of the Fourteenth Amendment? In Eastlake *supra*, at 426 U.S. 693, 96 S.Ct. 2358 (1976) the justices write the essence of fair procedure is that the interested parties be given a reasonable opportunity to have their dispute resolved on the merits by reference to articulable rules. If a dispute involves only the conflicting rights of private litigants, it is elementary that the decision maker must be impartial and qualified to understand and apply the controlling rules. Because of the increasing frequency and need of zoning amendments, it is respectfully submitted that application of the Due Process Clause of the Fourteenth Amendment to the United States Constitution to hearings before municipal legislative zoning bodies, and enacted ordinances, is a substantial federal question.

In Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926) the court recognized the importance of zoning that created and *maintained* residential districts, from which business and trade of *every sort*, including hotels and apartment houses were excluded. Euclid was affirmed in Village of Belle Terre v. Boraas,

461 U.S. 1, 39 L.Ed. 2d 797, 94 S.Ct. 1536 (1974). In Euclid the arguments of the appellee were identical to the arguments of Appellees herein. In Euclid, the court held that before an ordinance can be declared unconstitutional, it must be clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare. In Euclid, the court upheld zoning of a 68 acre tract adjoined on the east and west by residential districts that prohibited within 620 feet of said residences facilities such as hospitals. The lands in question are surrounded by lands developed or zoned single family residential, except to the east where a street is a boundary, and are part of a 186.24 acre undeveloped tract. Appellee, Hospital Corporation of America, has planned a hospital within 200 feet of Hollybrook Drive. Some Appellants' homes are located beside Hollybrook Drive and are directly facing the proposed hospital. In Euclid, the rule of law announced therein was clearly designed to protect and maintain high quality residential neighborhoods. Appellees argued that there was a question of fact that Longview needed a second hospital and that their hospital had a substantial relationship to the public health aspect of the police power. Therefore, Appellees argued their hospital could be placed anywhere and upheld. Thus, a rule and case designed to protect residential neighborhoods is being used to allow a contrary use adjacent to a neighborhood developed and maintained under long established zoning ordinances. If zoning can thus be changed because any aspect of the police power is met, there is no such thing as substantive protection of zoned and developed single family residential areas. Appellants raised in all state courts that ordinance 1211 was clearly arbitrary and unreasonable. Thus the substantial federal question presented is — Can a hospital (or factory) be arbitrarily and unreasonably located adjacent to long developed and zoned single family residential neighborhoods merely because there may be a question of fact that it has a substantial relationship to some provision of the police power? Or stated another way, can the police power be used to disguise arbitrary action? Appellants respectfully contend the answer is no. Euclid was cited in Appellant's motion

for rehearing in the Texas Supreme Court, and similar principles of Connor v. City of University Park, 142, S.W.2d 706 (Tex.Civ.App. — Dallas 1940, writ ref'd) were cited to all state courts. It was undisputed that owners of the land and Hospital Corporation of America dictated the site selection despite the fact there was loop frontage 7/10th of a mile away. Another reason 1211 is arbitrary and unreasonable is it constitutes discriminatory, or "reverse spot," zoning: that is, a land use decision which arbitrarily singles out a particular parcel for different, less favorable treatment than the neighboring ones Penn Central Transp. Co. v. City of New York _____ U.S. _____, _____ LEd. 2d _____, 98 S.Ct. 2646, 2663 (1978), Thompson v. City of Palestine, 510 S.W.2d 579 (Tex.Sup.Ct. 1974).

The requirements of any planned development ordinance were to detail that would be done through such ordinances, and to insure a protective and reasonable transition to the surrounding neighborhood. Ordinance 1211 was, and is, constitutionally vague because the hospital construction and site development plans were not complete, and the ordinance itself contained vague provisions and exhibits when it was passed Appendix D (pp 41-44). It was not certain as to what was going to be done on the site. City employees had no guidelines, rules or standards to follow to implement 1211. Thus city employees were left discretionary authority without restriction to issue or deny building permits.

Ordinance 1211 is such that it forbids or requires performance of acts in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application Keyishian v. Board of Regents of New York, 385 U.S. 589, 603, 17 L.Ed.2d 629, 87 S.Ct. 675 (1969). Thus 1211 violates the due process of law clause of the Fourteenth Amendment. Appellants have been not only subjected to an unreasonable and arbitrary site selection for the hospital but they have been denied certain protection by the vague terms of the ordinance.

After trial on the merits, it was announced that the Hospital

Corporation of America agreed to a consent judgment to a complaint filed by the Securities and Exchange Commission against it which read Appellee paid 4.3 million dollars in bribes to foreign officials to build a hospital in their country. Appellants filed an amended motion for new trial seeking discovery of Appellee's records. They stated that the payment of said bribes, and the passage of them to patients, was contrary to the police power. Appellants were denied discovery of Appellee's records. Thus the substantial federal questions presented are, does the police power authorize the passage of an ordinance that may be used for a purpose clearly contrary to the police power, and were Appellants denied due process of law when they were denied discovery of Appellee's records?

CONCLUSION

For the reasons stated above, Appellants submit that this appeal brings before the court substantial and important federal questions which require plenary consideration, with briefs on the merits and oral argument, for their resolution, and that for the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Frank L. Supercinski, a member of the Bar of the Supreme Court of the United States and counsel of record for John Conway, et al, Appellants herein, hereby certify that, pursuant to Rule 33, Rules of the Supreme Court, I served three copies of this jurisdictional statement and its appendix on each of the parties herein, as follows:

On the Hospital Corporation of America, Appellee herein, by delivering the copies thereof to Mr. Rex Nichols or Mr. Robert Parker, attorneys of record for Appellee, at their office located at Suite 400 Bramlette Building, 300 N. Green Street, Longview, Texas 75601, on the 1st day of June, 1979. On the City of Longview, Texas, Appellee herein, by delivering the copies thereof to Mr. Earl Roberts, Jr., attorney of record for Appellee, at his office located at 404 N. Green Street, Longview, Texas 75601 on the 1st day of June, 1979.

All parties required to be served have been served. Dated the 1st day of June, 1979.

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APPENDICES

APPENDIX A

COURT OF CIVIL APPEALS
SIXTH DISTRICT
TEXARKANA, TEXAS

No. 8703

JOHN CONWAY, ET AL

Appellants

v.

THE HOSPITAL CORPORATION OF AMERICA
AND THE CITY OF LONGVIEW, TEXAS

Appellees

APPEALED FROM THE 124TH JUDICIAL DISTRICT COURT OF GREGG COUNTY, TEXAS

This suit challenges the validity of an ordinance enacted by the City of Longview, Texas, changing the zone classification of a 10.3 acre tract of land from "SF-4" (Single Family Residential) and "A" (Agricultural) to "Planned Development-Hospital."

In 1968 the City of Longview adopted a Comprehensive Zoning Ordinance and accompanying master plan establishing zoning for the entire city and plans for future development. In 1970 a 186 acre tract of land of which the 10.3 acre tract in question is a part was annexed into the City and given a zoning designation of "A" except for a 100 foot strip on the west side of the 10.3 acre tract which was designated "SF-4." A short time thereafter a portion of the 186 acre tract was

zoned to "Planned Development-Hospital" and attempts were made to secure the construction of a hospital on the rezoned portion. However, about two years later when the efforts to secure the hospital were abandoned the land was placed back in its "A" zoning designation and remained in such category until the ordinance in controversy was enacted.

The application of the owners of the 186 acre tract of land and appellee, Hospital Corporation of America, to the Longview Planning and Zoning Commission for rezoning of the 10.3 acre tract to "Planned Development-Medical Center" was denied on April 18, 1978, and no other applications were filed with or hearings had before the Planning and Zoning Commission. On May 9, 1978, the Longview City Commission held a public hearing to consider the same request which was denied on April 18, 1978, by the Planning and Zoning Commission and on July 6, 1978, enacted Ordinance No. 1178 rezoning the subject lands from "A" and "SF-4" to "PD-Medical Center." Shortly thereafter this action was filed for alleging Ordinance No. 1178 to be invalid for failure of the City to comply with the notice provisions of Tex. Rev. Civ. Stat. Ann. art. 1011d and upon hearing, the trial court so ruled and the appellees here agree that such was a correct ruling. However, after the notice defect was pled by the appellants, the Longview City Commission on August 29, 1978, caused notice to be issued and published that a public hearing would be held on September 15, 1978, for the purpose of considering the zoning change for the 10.3 acre parcel of land. This hearing was held and was attended by appellants' attorney and other interested persons. Thereafter Ordinance No. 1211, which is identical in all respects to Ordinance No. 1178, was enacted and the pleadings in this cause amended to so reflect.

This cause was heard on October 2, 1978, and the trial court entered its judgment finding Ordinance No. 1178 to be void because of a defect in notice and upholding the validity of Ordinance No. 1211. Findings of fact and conclusions of law were filed at appellants' request.

Appellants and their attorney are residents of the City of Longview residing in a residential area to the south of the 10.3 acre tract of land.

Appelllants' first four points of error attack the validity of Ordinance No. 1211 on the basis that it was never presented to the Planning and Zoning Commission, was passed without a hearing first being had before the Planning and Zoning Commission, and the Longview City Commission by its passage of Ordinance 1211 (replacing Ordinance No. 1178 under judicial attack) usurped and encroached upon the constitutional powers and functions of the judiciary. Appellants by their pleadings, briefs and arguments take the position that each ordinance as such must be first presented to and acted upon by the Planning and Zoning Commission. Neither Tex. Rev. Civ. Stat. Ann. art. 1011f nor the zoning ordinances of the City of Longview contain any such requirement nor is it contemplated that zoning or zoning changes originate with the Longview City Commission, given an ordinance number, and then referred to the Planning and Zoning Commission. It is undisputed that the application upon which Ordinance No. 1178 was based was properly before the Planning and Zoning Commission and the hearing and the action of the Commission thereon conformed with the controlling statutes and ordinances. It is further undisputed that the contents of Ordinance No. 1178 and Ordinance No. 1211 are identical in every respect. We can conceive of no logical reason why another hearing before the Planning and Zoning Commission should be required. Appellants cite the cases of *Smart v. Lloyd*, 370 S.W.2d 245, 248 (Tex. Civ. App. Texarkana 1963, no writ), and *Wallace v. Daniel*, 409 S.W.2d 184 (Tex. Civ. App. Tyler 1966, writ ref'd n.r.e.), as supporting their contentions. We do not disagree with either decision but do not find them to be determinative of the case before us. In *Smart*, supra, there was no recommendation of any type at any time from the Planning and Zoning Board to the City Commission. In *Wallace*, supra, the application before the Planning Commission was for a change to C-1 classification and upon hearing the Planning Commission recom-

mended to the City Commission a change to C-4 classification. The ordinance enacted pursuant to such recommendation was held to be invalid as a proper hearing before the Planning Commission had not been afforded, citing *Smart*, supra. Here the appellants were afforded a hearing before the Planning and Zoning Commission and received a favorable recommendation therefrom, and there are no provisions or requirements for a second or additional hearing. Delay of itself cannot form the basis for this Court to require another hearing before the Planning and Zoning Commission.

Appellants' contention that the City Commission was without power to enact Ordinance No. 1211 until such time as a final judgment voiding Ordinance No. 1178 had been entered is without merit. The legislative power of the City Commission cannot be stayed by the mere filing of a suit alleging the invalidity of an ordinance.

Appellants' further points of error assert that Ordinance No. 1211 is void because there was no change of conditions to justify its enactment; it was not passed pursuant to a comprehensive plan; it is unreasonable, capricious, arbitrary, oppressive and confiscatory; and is a clear abuse of municipal discretion. These contentions are briefed together and will be considered together. First, however, the applicable legal principles governing the determination of this controversy will be set forth in the language of the Texas judiciary.

City of Waxahachie v. Watkins, 154 Tex. 206, 275 S.W.2d 477 (1955):

> "Since it is an exercise of the legislative power of the city's council, the ordinance must be presumed to be valid.
>
> "The courts cannot interfere unless it appears that the ordinance represents a *clear abuse* of municipal discretion. And the 'extraordinary burden' rests on one attacking the ordinance 'to show that no *conclusive*, or even *controversial* or issuable, facts or conditions existed which would authorize the governing board of the municipality to exercise the discretion confided to it.' . . .

"The presumption of validity accorded original comprehensive zoning applies as well to an amendatory ordinance. Weaver v. Ham, 149 Tex. 309, 232 S.W.2d 704. In either case the courts have no authority to interfere unless the change is clearly unreasonable and arbitrary. Clesi v. Northwest Dallas Improvement Ass'n, Tex. Civ. App., 263 S.W.2d 820, 827, error refused, N.R.E., . . .

"If reasonable minds may differ as to whether or not a particular zoning restriction has a substantial relationship to the public health, safety, morals or general welfare, no clear abuse of discretion is shown and the restriction must stand as a valid exercise of the city's police power . . . if the issue of validity is fairly debatable courts will not interfere.

. . .

". . . if there is issuable fact as to whether the ordinance makes for the good of the community, the fact that it may be detrimental to some private interest is not material. Edge v. City of Bellaire, Tex. Civ. App., 200 S.W.2d 224, 227, error refused."

City of Fort Worth v. Johnson, 388 S.W.2d 400 (Tex. 1964):

"The first ground is unsound because it fails to take cognizance of the rule, firmly established in this State, that a zoning ordinance, duly adopted pursuant to Arts. 1011a-1011k, is presumed to be valid, and the burden is on one seeking to prevent its enforcement, whether generally or as to particular property, to prove that the ordinance is arbitrary or unreasonable in that it bears no substantial relationship to the health, safety, morals or general welfare of the community. City of Bellaire v. Lamkin, 159 Tex. 141, 317 S.W.2d 43; City of Waxahachie v. Watkins, 154 Tex. 206, 275 S.W.2d 477; Connor v. City of University Park, Tex. Civ. App., 142 S.W.2d 706, writ refused. Adoption of a zoning ordinance by the governing body of a city represents the exercise of a delegated legislative discretion, and enforcement or non-enforcement of the ordinance is not a matter for judicial discretion . . . If the evidence is conclusive that a zoning ordinance is arbitrary and unreasonable, generally or as to particular property, it is the duty of the courts to refuse to enforce it; but in the absence of such proof, it is the duty of the courts to enforce it."

Baccus v. City of Dallas, 450 S.W.2d 389 (Tex. Civ. App. Dallas 1970), writ ref'd n.r.e., 454 S.W.2d 391 (Tex. 1970):

> ". . . A city ordinance is presumed to be valid. This presumption applies to amendatory zoning ordinances as well as an original comprehensive zoning ordinance. Courts should not interfere unless the amending ordinance is clearly unreasonable and arbitrary and represents a clear abuse of discretion. If the question is fairly debatable, courts will not interfere. The burden rests on one attacking an ordinance to show that no *conclusive* or even controversial facts or conditions exist which would authorize the Council to exercise the discretion confided to it. Whether attacking parties have met their burden is a question of law. If there is an issuable fact whether the ordinance makes for the good of the community, the fact that it may be detrimental to private interest is immaterial. . . .
>
> "Art. 1011e, Vernon's Ann. Civ. St. of Texas, authorizes changes in zoning ordinances from time to time. The statute does not by its terms require that there shall be a change in conditions since the enactment of the Comprehensive Zoning Ordinance. It has been held that such a change is not necessary if the rezoning ordinance bears a reasonable resemblance to the general welfare, to the orderly plan of zoning development and is not objectionable as constituting spot zoning. . . ."

Hunt v. City of San Antonio, 462 S.W.2d 536 (Tex. 1971):

> ". . . A city ordinance is presumed to be valid, and this presumption applies to amendatory zoning ordinances as well as original comprehensive zoning ordinances. In either case the courts have no authority to interfere unless the ordinance is unreasonable and arbitrary — a clear abuse of municipal discretion. If reasonable minds may differ as to whether or not a particular zoning ordinance has a substantial relationship to the public health, safety, morals or general welfare, no clear abuse of discretion is shown and the ordinance must stand as a valid exercise of the city's policy (sic) power. An 'extraordinary burden' rests on one attacking the ordinance to show that no conclusive or even controversial issuable facts or conditions exist which would authorize the governing board of the municipality to exercise the discretion confided to it. This query presents a question of law, not a question of fact. City of Waxahachie v. Watkins, 154 Tex. 206, 275 S.W.2d 477 (1955). . . ."

Thompson v. City of Palestine, 510 S.W.2d 579 (Tex. 1974):

> "At the outset it should be noted that this Court has consistently recognized that the adoption of a zoning ordinance by a city's governing body in accordance with Article 1011a et seq., is an exercise of its legislative discretion and therefore is presumed to be valid. City of University Park v. Benners, 485 S.W.2d 773 (Tex. 1972); Hunt v. City of San Antonio, 462 S.W.2d 536 (Tex. 1971); City of Waxahachie v. Watkins, 154 Tex. 206, 275 S.W.2d 477 (1955). We have also held that an 'extraordinary burden' rests on the party attacking the ordinance to show that no conclusive or even controversial issuable facts or conditions exist which would authorize the City Council to exercise the discretion confided to it, and that if reasonable minds may differ as to whether or not a particular zoning ordinance has a substantial relationship to the public health, safety, morals or general welfare, no clear abuse of discretion is shown and the ordinance must stand as a valid exercise of the city's police power. . . ."

McWhorter v. City of Winnsboro, 525 S.W.2d 701 (Tex. Civ. App. Tyler 1975, writ ref'd n.r.e.):

> ". . . The determination of when the public interest does require an amendment of a zoning ordinance is within the legislative discretion of the municipality and if reasonable minds may differ as to the public health, safety, morals or general welfare, no clear abuse of discretion is shown, and the amendatory ordinance must stand as a valid exercise of the city's power. Nichols v. Dallas, 347 S.W.2d 326 (Tex. Civ. App., Dallas, 1961, writ ref'd., n.r.e.)."

The rezoned 10.3 acre tract of land is located north of Hollybrook Drive and west of North Fourth Street. North Fourth Street is a four-lane north-south street connecting Highway No. 80 to the south and U. S. Highway 259 (Loop 281) to the north and transverses the residential area of appellants and the 186 acre tract. Loop 281 borders the 186 acre tract on the north and east. Hollybrook Drive runs generally east and west and is the north boundary of the residential area and the south boundary of the 186 acre tract and the 10.3 acre tract. Hollybrook Drive connects with Loop 281 near the southeast corner of the 186 acre tract. The entire tract is undeveloped pine

timber land. The rezoning ordinance sets forth conditions and restrictions for the use and development of the 10.3 acre tract, one of which is the maintenance of a 50 foot natural berm north of Hollybrook Drive and another providing for building setbacks of 200 feet from Hollybrook Drive and 300 feet from North Fourth Street.

From a review of the entire record before this Court it cannot be said that appellants have demonstrated that the amending ordinance is clearly unreasonable and arbitrary. Appellants have not met the "extraordinary burden" of showing that there were no facts existing which would authorize the rezoning of the 10.3 acre tract.

The judgment of the trial court is affirmed.

/s/ BUN L. HUTCHINSON

Bun L. Hutchinson
Associate Justice

January 25, 1979
Filed January 25, 1979

JUDGMENT

BE IT REMEMBERED that on Thursday the 25th day of January, A. D. 1979, the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas met in the City of Texarkana. Present William J. Cornelius, Chief Justice, C. L. Ray, Jr., Associate Justice, Bun L. Hutchinson, Associate Justice, and Louise Waldrop Lohse, Clerk, when the following proceedings, among others, were had, to-wit:

No. 8703

JOHN CONWAY, ET AL

Appellants

v.

THE HOSPITAL CORPORATION OF AMERICA AND THE CITY OF LONGVIEW, TEXAS

Appellees

APPEALED FROM THE 124TH JUDICIAL DISTRICT COURT OF GREGG COUNTY, TEXAS

THIS CAUSE came on to be considered on the transcript of the record, the statement of facts, and upon the briefs and oral argument of the parties; and the Court, after considering the same, is of the opinion and finds there was no error in the judgment of the Court below.

It is accordingly CONSIDERED, ORDERED AND ADJUDGED that the judgment of the trial court be, and it is hereby, in all things AFFIRMED, in conformity with the written opinion of this Court of even date on file herein; that appellants John Conway, Et Al (being all plaintiffs named in Plaintiffs' Second Amended Petition on file herein), shall pay all costs in this behalf expended, both in this Court and the Court below, for which let execution issue; and the Court, noting that appellants, by and through their attorney of record, Frank Supercinski, have deposited cash into the Registry of the Court below, hereby directs the Clerk of the Court below to pay out of such

deposit all costs of this appeal; and that this judgment be certified to the Court below for observance.

APPENDIX B

IN THE COURT OF CIVIL APPEALS FOR THE SIXTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS

No. 8703

JOHN CONWAY, ET AL

vs.

THE HOSPITAL CORPORATION OF AMERICA AND THE CITY OF LONGVIEW, TEXAS

MOTION FOR REHEARING

TO THE HONORABLE JUDGES OF SAID COURT:

Appellants respectfully allege the Honorable Court of Civil Appeals erred in its opinion dated January 25, 1979, and file this motion for rehearing. Grounds of error are:

1. The Court of Civil Appeals erred when it held the Longview Zoning Ordinance did not contain the express requirement that Ordinance 1211 (a second amendment, supplement, or change to the Longview Ordinance) must be first presented to and acted upon by the City Planning and Zoning Commission. A prior hearing of the Planning and Zoning Commission on a prior void ordinance did not excuse compliance with mandatory city zoning law to legally enact 1211. Applicable provisions of the Longview Comprehensive Zoning Ordinance clearly provide:

   Article 21-102(b). *Before taking action on any proposed amendment, supplement or change, the governing body shall* submit the same to the City Planning and Zoning Commission for its recommendation and report.

Article 21-102(c). *The City Planning and Zoning Commission shall hold a public hearing on any application for any amendment or change prior to making its recommendation and report to the City Commission.* Written notice of all public hearings before the City Planning and Zoning Commission on a proposed amendment or change shall be sent to all owners of real property lying within two hundred (200) feet of the property on which the change is requested. Such notice shall be given not less than ten (10) days before the date set for hearing by posting such notice properly addressed and postage-paid to each taxpayer as the ownership appears on the last approved City tax roll.

Article 8-501. The City Commission of the City of Longview, Texas, after public hearing and proper notice to all parties affected and *after recommendation from the City Planning and Zoning Commission,* may authorize the creation of the following types of Planned Development Districts:

Article 6-100. All territory hereafter annexed to the City of Longview shall be temporarily classified as "A", agricultural district, until permanent zoning is established by the City Commission of the City of Longview. *The procedure for establishing permanent zoning on annexed territory shall conform to the procedure established by law for the adoption of original zoning regulations.*

2. Without a second application to rezone the subject lands, and without a second proposal or recommendation from the Longview Planning and Zoning Commission, the City Commission of Longview was powerless on its own motion to enact 1211. A prior application to rezone and recommendation thereof on a void ordinance did not empower the City Commission to pass 1211. The City Commission must have a second application, or initiate a second zoning amendment with the Planning and Zoning commission, and *have the second recommendation* of the Planning and Zoning Commission before it can enact a second ordinance. See Articles 21-101, 21-102(a) of the Longview Comprehensive Zoning Ordinance.

3. The Court of Civil Appeals erred when it held that Article 1011f V.A.T.S. did not contain the requirement that proposed zoning

changes *must* first go to the Longview Planning and Zoning Commission for its recommendation. Said article expressly provides:

In order to avail itself of the powers conferred by this Act, such legislative body shall appoint a commission, to be known as the Zoning Commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, *and such legislative body shall not hold its public hearings or take action until it has received the final* report of such Commission.

4. In enacting Ordinance 1211, the Longview City Commission did not so comply with Article 1011f V.A.T.S. and the herein above provisions of its Comprehensive Zoning Ordinance, and 1211 is void because each act is essential to the exercise of its jurisdiction and each must be rigidly performed. When Longview enacted its Comprehensive Zoning Ordinance it exhausted its power to make changes in zone boundaries therein *except in accordance with the procedure set out in the comprehensive ordinance*. When a statute directs that action be taken in a certain way it may be performed in no other manner. The Legislature having said by Article 1011d V.A.T.S. that cities adopting a Comprehensive Zoning Ordinance must provide a procedure for the amendment of such ordinance, by implication directs that the city will follow the procedure it adopts *Bolton v. Sparks* 362 S.W. 2d. 946, 949, 950 (Tex. 1962); *Smart v. Lloyd* 370 S.W. 2d. 245, 246, 248 (Tex. Civ. App. — Texarkana 1963, no writ); *Wallace v. Daniel* 409 S.W. 2d. 184, 187-188 (Tex. Civ. App. — Tyler 1966, writ ref'd n.r.e.).

5. The Court of Civil Appeals erred when it held that the Longview City Commission did not usurp, or encroach upon, judicial constitutional powers and functions.

6. The Court of Civil Appeals erred when it held that Appellants did

not demonstrate that amending ordinance 1211 is clearly unreasonable and arbitrary.

7. The Court of Civil Appeals erred when it held Appellants have not met the "extraordinary burden" of showing that there were no facts existing which would authorize the rezoning of the subject lands.

8. The Court of Civil Appeals erred when it did not sustain Appellants point of error three alleging:

   The hearing of September 15, 1978 (when Ordinance 1211 was enacted) denied Appellants' due process of law in violation of the Texas and United States Constitutions, violated Article 1011d V.A.T.S., and thereby voided 1211.

9. The Court of Civil Appeals erred when it did not sustain Appellants point of error five alleging:

   Amendatory ordinance 1211 was not passed pursuant to a comprehensive plan mandated by Article 1011c V.A.T.S.

10. The Court of Civil Appeals erred when it did not sustain Appellant point of error six alleging:

    Amendatory ordinance 1211 is void because there were no change of conditions that legally excused or justified its enactment.

11. The Court of Civil Appeals erred when it did not sustain Appellants point of error seven alleging:

    Amendatory ordinance 1211 is capricious, oppressive or confiscatory.

12. The Court of Civil Appeals erred when it did not sustain Appellants point of error eight alleging:

    Amendatory ordinance 1211 is spot zoning.

13. The Court of Civil Appeals erred when it did not sustain Appellants point of error nine alleging:

    Amendatory ordinance 1211 constitutes a clear abuse of municipal discretion.

14. The Court of Civil Appeals erred when it did not sustain Appellants point of error ten alleging:

> Amendatory ordinance 1211, and articles 8-502, 503 of the Longview Comprehensive Zoning Ordinance, deny due process of law because they are vague, ambiguous, uncertain, incomplete and, therefore, void.

15. The Court of Civil Appeals erred when it did not sustain Appellants point of error eleven alleging:

> Amendatory ordinance 1211 is void because it leaves city officials discretionary authority without restriction to enforce it and because it fails to provide any criteria or guidelines to follow, thereby denying due process of law.

16. The Court of Civil Appeals erred when it did not sustain Appellants point of error twelve alleging:

> Amendatory ordinance 1211 fails to provide any substantive protection to Appellants' properties and therefore constitutes an unreasonable, arbitrary, oppressive, and confiscatory taking of their properties.

17. The Court of Civil Appeals erred when it did not sustain Appellants point of error thirteen alleging:

> The trial court erred in overruling Appellants' amended motion for new trial because the police zoning power cannot be used to allow passage of, to local patients, the 4.3 million dollars in bribes paid by the Hospital Corporation of America to build or manage other hospitals.

18. The Court of Civil Appeals erred when it did not sustain Appellants point of error fourteen alleging:

> The trial court denied Appellants' due process of law when it overruled Appellants' Amended Motion for new trial and refused to hear evidence concerning the payment of 4.3 million dollars in bribes by the Hospital Corporation of America or to allow discovery about the passage of same to local patients. This is especially error in light of *Goodwin v. Goodwin* 562 S.W. 2d. 532 (Tex. Civ. App. — Texarkana 1978, no writ).

19. The Court of Civil Appeals erred when it did not sustain Appellants point of error fifteen alleging:

> The trial court erred in overruling Appellants' amended motion for new trial because 1211 ordinance was violated by the Hospital Corporation of America.

WHEREFORE PREMISES CONSIDERED, Appellants pray that the Honorable Court grant their Motion for Rehearing.

Respectfully Submitted,

/s/ FRANK L. SUPERCINSKI
FRANK L. SUPERCINSKI
Attorney for Appellants

P. O. Box 6108
Longview, Texas 75604

CERTIFICATE OF SERVICE

I hereby certify that I delivered a true and correct copy of the above Motion for Rehearing, by mailing a copy of the same on February 2, 1979, correct postage prepaid, to Earl Roberts, Jr., and Robert Parker to their last known respective addresses of P. O. Drawer 2072, Longview, Texas 75601, and P. O. Box 2623, Longview, Texas 75601.

/s/ FRANK L. SUPERCINSKI
FRANK L. SUPERCINSKI

COURT OF CIVIL APPEALS
SIXTH SUPREME JUDICIAL DISTRICT
TEXARKANA, TEXAS 75501

January 31, 1979

Hon. Frank L. Supercinski
P. O. Box 6108
Longview, Texas 75604

Hon. Robert Parker
P. O. Box 2623
Longview, Texas 75601

Hon. Earl Roberts, Jr.
P. O. Drawer 2072
Longview, Texas 75601

Gentlemen:

Re: No. 8703 — John Conway, Et Al v. The Hospital Corporation of America and The City of Longview, Texas

We have this date received from Mr. Supercinski the Appellant's Motion for Rehearing in the referenced proceeding. Said Motion was filed in triplicate and brought to the immediate attention of the Court.

Mr. Supercinski attests that he has made service of said Motion upon Messrs. Parker and Roberts.

Sincerely yours,

LOUISE WALDROP LOHSE, CLERK

/s/ JOYCE KASTLER
By: Joyce Kastler
Deputy Clerk

COURT OF CIVIL APPEALS
SIXTH SUPREME JUDICIAL DISTRICT
TEXARKANA, TEXAS 75501

February 12, 1979

Hon. Frank L. Supercinski
P. O. Box 6108
Longview, Texas 75604

Hon. Robert Parker
P. O. Box 2623
Longview, Texas 75601

Hon. Earl Roberts, Jr.
P. O. Drawer 2072
Longview, Texas 75601

Gentlemen:

Re: No. 8703 — John Conway, Et Al v. The Hospital Corporation of America and The City of Longview, Texas

The Court entered its order this date in the referenced proceedings whereby Appellants' Motion for Rehearing was OVERRULED.

PLEASE TAKE DUE NOTICE HEREOF.

Sincerely yours,

LOUISE WALDROP LOHSE, CLERK

/s/ JOYCE KASTLER
By: Joyce Kastler
Deputy Clerk

APPENDIX C

IN THE
SUPREME COURT OF TEXAS
Austin, Texas

No. B-8289

JOHN CONWAY, ET AL

Petitioners

vs.

THE HOSPITAL CORPORATION OF AMERICA
AND THE CITY OF LONGVIEW, TEXAS

Respondents

MOTION FOR REHEARING

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioners, John Conway, et al, by and through their attorney of record, respectfully file this Motion for Rehearing to this Honorable Court's denial of their Application for Writ of Error March 14, 1979. Notice of said denial was received by Petitioners' attorney through the United States mail March 16, 1979.

I.

The refusal to grant Petitioners' Application for Writ of Error, and the failure to sustain the points of error therein, conflicts with *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303. In *Euclid*, the United States Supreme Court listed as considerations bearing on the constitutionality of zoning ordinances the danger of fire or collapse of buildings, the evils of overcrowding people, and the possibility that *"offensive trades, industries, and structures might" create nuisance to residential sections*. In *Euclid* the high court

upheld a zoning ordinance that excluded industries and apartments desired to be built on an undeveloped 68 acre tract of land adjacent to an established residential neighborhood. The facts in *Euclid* and the facts this case are too close to distinguish. Further, the exclusion of all industrial establishments in *Euclid* did not mean that only offensive or dangerous industries would be excluded. The clear purpose of Euclid was to keep *residential areas* (developed or not) free of disturbing noises, increased traffic, the hazard of moving and parked automobiles, and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities. To the same effect is *Connor v. City of University Park*, 142 S.W.2d. 706 (Tex. Civ.App. — Dallas 1940, writ ref'd) previously brought to the attention of this Honorable Court and the Court of Civil Appeals.

II.

What is at stake is the preservation of areas developed and zoned residential. The mere statement that the proposed hospital is good for the public health should not abrogate the rights of Petitioners to the zoning preservation of their neighborhood as a desirable neighborhood for single family living. If the contrary argument prevails, the mere difference of opinion about meeting any aspect of the police power will abrogate the preservation of areas long zoned and developed residential. Such an application of the police power is clearly unreasonable and arbitrary.

III.

Due process of law is secured *if* the law operates on *all* persons (including Hospital Corporations) alike and the individual is not subjected to an arbitrary exercise of the powers of government. In this case there is a want of due process of law because Ordinance 1211 on its face is clearly arbitrary and unreasonable. In this case, there is a want of due process of law because, as set out in petitioners' application for writ of error, there has been no observance of the forms of

law. Articles 1011c, 1011d, 1011e, and 1011f Texas Revised Civil Statutes have been, in this case, to date ignored by all state courts and the Longview City Commission. Articles 21-101, 21-102(a-c), 6-100, and 8-501 of the Longview Comprehensive Zoning Ordinance have been similarly ignored. Stare decisis, particularly *Bolton v. Sparks*, 362 S.W.2d 946 (Tex.1962), has been ignored. Therefore, the due process of law and due course of law provisions of the United States and Texas Constitutions have been violated.

IV.

It was error for this Honorable Court not to sustain Petitioners' Points of Error which read:

Point of Error 1. The Court of Civil Appeals erred when it held the Longview Comprehensive Zoning Ordinance did not contain the express requirement that Ordinance 1211 (an amendment, supplement or change to the Longview Comprehensive Zoning Ordinance) must be first presented to and acted upon by the City Planning & Zoning Commission prior to its enactment by the Longview City Commission.

Point of Error 2. The Longview City Commission was powerless to enact Ordinance 1211, a second ordinance, without the second recommendation of the Planning & Zoning Commission.

Point of Error 3. The Court of Civil Appeals erred when it held that Article 1011f V.A.T.S. did not contain the requirement that proposed zoning changes must first go to the Longview Planning & Zoning Commission for its recommendation prior to hearing by the Longview City Commission.

Point of Error 4. The Court of Civil Appeals erred when it held that the Longview City Commission did not usurp, or encroach upon, judicial constitutional power and functions when it enacted Ordinance 1211.

Point of Error 5. The Court of Civil Appeals erred when it held that Petitioners did not demonstrate that Ordinance 1211 is clearly unreasonable and arbitrary.

Point of Error 6. The Court of Civil Appeals erred when it held Petitioners did not meet the "extraordinary burden" of showing that there were no facts existing which would authorize the rezoning of the subject lands.

Point of Error 7. The Court of Civil Appeals erred when it did not hold that the hearing of September 15, 1978 (when Ordinance 1211 was enacted) denied Petitioners due process of law in violation of the Texas and United States Constitutions, violated Article 1011d V.A.T.S., and thereby voided 1211.

Point of Error 8. The Court of Civil Appeals erred when it did not hold that Amendatory Ordinance 1211 was not passed pursuant to a comprehensive plan mandated by Article 1011c V.A.T.S.

Point of Error 9. The Court of Civil Appeals erred when it did not hold that Amendatory Ordinance 1211 is void because there were no change of conditions that legally excused or justified its enactment.

Point of Error 10. The Court of Civil Appeals erred when it did not hold that Amendatory Ordinance 1211 is capricious, oppressive or confiscatory.

Point of Error 11. The Court of Civil Appeals erred when it did not hold that Amendatory Ordinance 1211 is spot zoning.

Point of Error 12. The Court of Civil Appeals erred when it did not hold Amendatory Ordinance 1211 constitutes a clear abuse of municipal discretion.

Point of Error 13. The Court of Civil Appeals erred when it did not hold Amendatory Ordinance 1211, and Articles 8-502, 503 of the Longview Comprehensive Zoning Ordinance, deny due process of law because they are vague, ambiguous, uncertain, incomplete and, therefore, void.

Point of Error 14. The Court of Civil Appeals erred when it did not hold that Amendatory Ordinance 1211 is void because it leaves city officials discretionary authority without restriction to enforce it and because it fails to provide any criteria or guidelines to follow, thereby denying due process of law.

Point of Error 15. The Court of Civil Appeals erred when it did not hold Amendatory Ordinance 1211 fails to provide any substantive protection to Petitioners' properties and therefore constitutes an unreasonable, arbitrary, oppressive, and confiscatory taking of their properties.

Point of Error 16. The Court of Civil Appeals erred when it did not hold the trial court erred in overruling Petitioners' amended motion for new trial because the police zoning power cannot be used to allow passage of, to local patients, the 4.3 million dollars in bribes paid by the Hospital Corporation of America to build or manage other

hospitals.

Point of Error 17. The Court of Civil Appeals erred when it did not hold that the trial court denied Petitioners due process of law when it overruled Petitioners' Amended Motion for New Trial and refused to hear evidence concerning the payment of 4.3 million dollars in bribes by the Hospital Corporation of America or to allow discovery about the passage of same to local patients.

Point of Error 18. The Court of Civil Appeals erred when it did not hold the trial court erred in overruling Petitioners' Amended Motion for New Trial because 1211 ordinance was violated by the Hospital Corporation of America.

V.

Petitioners respectfully renew their motions for rehearing, for leave to file, and for inunction filed in cause number B-8245 in this Honorable Court. The destruction of the land as described in Cause No. B-8245 is continuing. Petitioners respectfully request prompt action on this motion for rehearing and their renewal of injunctive proceedings. In the event this Honorable Court denies them relief, they desire to petition the United States Supreme Court for certiorari, stays, and injunctive relief, before the subject matter of the suit is destroyed beyond effective repair.

Wherefore, Premises Considered, Petitioners pray that this Motion for Rehearing be granted, that this Honorable Court issue its injunction to preserve the subject matter of the suit, and that this Honorable Court take prompt action to finally decide this cause.

Respectfully submitted,

/s/ FRANK L. SUPERCINSKI
FRANK L. SUPERCINSKI
Attorney for Petitioners
P. O. Box 6108
Longview, Texas 75604
(214) 759-3861

CERTIFICATE OF SERVICE

I hereby certify that I delivered a true and correct copy of the above and foregoing Motion for Rehearing to Robert M. Parker and Earl Roberts, Jr. by mailing a copy of the same on or about the 20th day of March, 1979, correct postage prepaid, to P. O. Box 2623, Longview, Texas 75601 and P. O. Drawer 2072, Longview, Texas 75601 last known addresses of said attorneys for Respondents.

/s/ FRANK L. SUPERCINSKI
FRANK L. SUPERCINSKI

CLERK'S OFFICE - SUPREME COURT

March 21, 1979

Austin, Texas

Dear Sir:

You are hereby notified that the Motion for Rehearing in the case of JOHN CONWAY ET AL vs. THE HOSPITAL CORPORATION OF AMERICA AND THE CITY OF LONGVIEW, B-8289, was this day received and filed.

Very truly yours,
GARSON R. JACKSON, Clerk

IN THE SUPREME COURT OF TEXAS

March 14, 1979

No. B-8289

JOHN CONWAY ET AL.
vs.
THE HOSPITAL CORPORATION OF AMERICA
AND THE CITY OF LONGVIEW

From Gregg County, Sixth District.

Application of petitioners for writ of error to the Court of Civil Appeals for the Sixth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicants, John Conway et al., pay all costs incurred on this application.

April 11, 1979

No. B-8289

JOHN CONWAY ET AL.
vs.
THE HOSPITAL CORPORATION OF AMERICA
AND THE CITY OF LONGVIEW

From Gregg County, Sixth District.

Petitioners motion for rehearing of application for writ of error

having been duly considered, it is ordered that said motion be, and hereby is, overruled.

I, GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this, the 23rd day of April, 1979.

GARSON R. JACKSON, Clerk

By /s/ MARY M. WAKEFIELD, Deputy.
Mary M. Wakefield

APPENDIX D

ORDINANCE NO. 1211

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF LONGVIEW, TEXAS (ORDINANCE NO. 96) AS AMENDED, BY CHANGING THE ZONING OF THAT CERTAIN 10.3 ACRE TRACT OF LAND OUT OF THE P. P. RAINS SURVEY, LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH FOURTH STREET AND HOLLYBROOK DRIVE IN THE CITY OF LONGVIEW, TEXAS; PROVIDING FOR PENALTY FOR VIOLATION OF $200.00; CONTAINING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Planning and Zoning Commission of the City of Longview, Texas, and the City Commission of the City of Longview, Texas, in compliance with the Charter of the City of Longview and the State laws in reference to the Zoning Ordinance regulations of the zoning map, have given requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners, generally and to persons interested, situated in the affected area and in the vicinity thereof, the City Commission of the City of Longview, Texas, being of the opinion that the zoning changes should be made as set forth herein:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LONGVIEW, TEXAS:

Section 1. That the Comprehensive Zoning Ordinance of the City of Longview, Texas (Ordinance No. 96 of the Ordinances of the City of Longview), as amended, be, and the same is hereby amended as follows:

> That the real property described in Exhibit "A" which is attached hereto and made a part hereof for all purposes, said property presently being located partly in Agricultural (A) Zoning District and partly in One-Family Dwelling (SF-4) Zoning District according to the Official Zoning Map of the City of Longview, be and the same is hereby placed in a Planned Development (PD)-Medical Center Zoning District.

Section 2. That the Comprehensive Site Plan of Development with the Application for Rezoning is hereby approved and ordered filed as a part of this Ordinance. The Plan shall also be subject to the following conditions, restrictions and stipulations:

A. All setbacks as indicated on the Site Plan shall be maintained as shown but not less than 300 feet from North Fourth Street nor 200 feet from Hollybrook Drive;

B. The natural berm on Hollybrook Drive shall be maintained and no grading shall be done within 50 feet from the North ROW Line of Hollybrook Drive;

C. A landscaping plan shall be presented to and approved by the City Director of Planning prior to the issuance of a building permit;

D. The Hospital Corporation of America shall pay for the planning, engineering and construction of acceleration and deceleration lanes for traffic at the intersection of North Fourth Street and Hollybrook Drive, shall participate financially in the construction of a left-turn lane at that intersection in an amount to be agreed upon between the City and Hospital Corporation of America, and The Hospital Corporation of America shall deliver to the City a letter embodying its agreement prior to the issuance of a building permit.

E. All traffic patterns within the site shall be approved by the City;

F. No structure shall be constructed on the site which has more than three (3) stories.

Section 3. That the Director of Planning is hereby directed to amend the official Zoning District Map of the City of Longview to reflect the changes made by this Ordinance.

Section 4. That in all other respects the use of the herein described property shall be subject to all of the applicable regulations of the Zoning Ordinance of the City of Longview as amended.

Section 5. That any person, firm or corporation violating any of the terms and provisions of this Ordinance shall be subject to those penalties set forth in Section 1-4 of the Code of Ordinances of the City

of Longview, Texas.

Section 6. That the terms and provisions of this Ordinance shall be deemed to be severable in that the validity of the zoning affecting any portion of the above described property shall be declared invalid, the same shall not affect the validity of the zoning of the balance of said property.

Section 7. This Ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Longview, Texas, and it is accordingly so ordained.

PASSED AND APPROVED this 15th day of September, 1978.

/s/ BOB MANESS
MAYOR OF THE CITY OF
LONGVIEW, TEXAS

ATTEST:

/s/ JO ANN H. METCALF
CITY SECRETARY

EXHIBIT A

BEGINNING at a ½'' iron rod set at a fence corner post found at the intersection of the north ROW of Hollybrook Drive and the west ROW of North Fourth Street; said iron rod being S 89 deg. 54'17'' East 2062.80 feet from a ¾'' iron pipe found for the Southwest corner of said 186.24 acre tract;

THENCE N 89 deg. 54'17'' W, 750 feet along the north ROW line of Hollybrook Drive to a point for corner;

THENCE N 00 deg. 08'06'' E, 588 feet to a point for corner;

THENCE 89 deg. 51'43'' E, 762.88 feet to a point in the West ROW line of North Fourth Street;

THENCE in a Southerly direction along the West ROW line of North Fourth Street, 316 feet around a curve with a radius of 1637.27 to the PC of said curve;

THENCE S 04 deg. 21'00'' W, 272.75 feet with the West ROW line of North Fourth Street to the PLACE OF BEGINNING, and containing 10.3 acres of land, more or less;

APPENDIX E

IN THE
COURT OF CIVIL APPEALS
Sixth Supreme Judicial District
Texarkana, Texas

No. 8703 In the Court of Civil Appeals
Nos. B-8289 and B-8245 In the Texas Supreme Court

JOHN CONWAY, ET AL

Petitioners

vs.

THE HOSPITAL CORPORATION OF AMERICA
AND THE CITY OF LONGVIEW, TEXAS

Respondents

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE SUPREME COURT OF TEXAS

Notice is hereby given that John Conway, et al, the Petitioners above-named, hereby appeal to the Supreme Court of the United States from the overruling of Petitioners' motion for rehearing in the above styled and numbered causes, by the Texas Supreme Court, the highest Court of the State of Texas, entered in said actions on April 11, 1979, denying Petitioners' application for writ of error.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraphs 1, 2 and 3.

Petitioners will file a direct appeal to the Supreme Court of the United States or a petition for writ of certiorari.

This notice of appeal is being filed in the Court of Civil Appeals pursuant to Rule 10(3) United States Supreme Court Rules because said court is the court processing the record of this cause.

Dated April 18, 1979.

Respectfully submitted,

/s/ FRANK L. SUPERCINSKI

FRANK L. SUPERCINSKI
Attorney for Petitioners
P. O. Box 6108
Longview, Texas 75604
(214) 759-3861

CERTIFICATE OF SERVICE

I hereby certify that I delivered a true and correct copy of the above and foregoing Notice of Appeal to the Supreme Court of the United States to Robert M. Parker and Earl Roberts, Jr. by mailing a copy of the same on or about the 18th day of April, 1979, correct postage prepaid, to P. O. Box 2623, Longview, Texas 75601 and P. O. Drawer 2072, Longview, Texas 75601, last known addresses of said attorneys for Respondents.

/s/ FRANK L. SUPERCINSKI

FRANK L. SUPERCINSKI

IN THE
COURT OF CIVIL APPEALS
Sixth Supreme Judicial District
Texarkana, Texas

No. 8703 In the Court of Civil Appeals
Nos. B-8289 and B-8245 In the Texas Supreme Court

JOHN CONWAY, ET AL

Petitioners

vs.

THE HOSPITAL CORPORATION OF AMERICA
AND THE CITY OF LONGVIEW, TEXAS

Respondents

SUPPLEMENTAL NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE SUPREME COURT OF TEXAS AND COURT OF CIVIL APPEALS:

Petitioners file this supplement to the notice of appeal to the Supreme Court of the United States filed April 19, 1979.

By this supplemental notice, Petitioners give notice of appeal from the Court of Civil Appeals judgment of January 25, 1979 and incorporate and make a part of this notice of appeal all other items set out in the notice of appeal filed April 19, 1979.

Respectfully submitted,

/s/ FRANK L. SUPERCINSKI

FRANK L. SUPERCINSKI
Attorney for Petitioners
P. O. Box 6108
Longview, Texas 75604
(214) 759-3861

CERTIFICATE OF SERVICE

I hereby certify that I delivered a true and correct copy of the above and foregoing Supplemental Notice of Appeal to the Supreme Court of the United States to Mr. Robert M. Parker and Mr. Earl Roberts, Jr. by mailing a copy of the same on or about the 23rd day of April, 1979, correct postage prepaid, to P. O. Box 2623, Longview, Texas 75601 and P. O. Drawer 2072, Longview, Texas 75601, last known addresses of said attorneys for Respondents.

/s/ FRANK L. SUPERCINSKI

FRANK L. SUPERCINSKI

APPENDIX F

CITY OF LONGVIEW
P. O. Box 1952
Longview, Texas 75601

June 28, 1978

Dear Property Owner:

This letter is to inform you of a City of Longview City Commission meeting to be held on July 6, 1978, at 11:00 A.M. in the Commission Room of the Municipal Building.

The Commission will consider the request of the Hospital Corporation of America (HCA) for a change in zoning from SF-4 (Single-Family Residential) and Agricultural, to Planned Development-Medical Center, on property described as a 10.3 acre portion of Lot 4, Block E, of the P. P. Rains Survey, located at the northwest corner of Fourth and Hollybrook Streets.

The request was tabled by the Commission at their meeting of May 9, 1978, pending the receipt of a Certificate of Need by the HCA from the State.

This letter is being sent to you as a courtesy based on the interest you have shown in the request. The two public hearings required by law have been held and all testimony noted. Therefore, this July 6 meeting will not be a public hearing to receive further testimony, unless so desired by the Commission.

Your attendance at the meeting will be welcomed.

If you have any questions, please call me at 757-6666, Extension 43.

Sincerely,

CITY OF LONGVIEW

/s/ ED ROHNER
Ed Rohner
City Planner

ER/pb